From Law and Literature to Legality and Affect by Greta Olson

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Book Review

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Abstract

IN A SPEECH ADDRESSING the Canadian Bar Association in 1970, leading literary critic of the twentieth century Northrop Frye said that “all respect for the law is a product of the social imagination, and the social imagination is what literature directly addresses.”3 In her book From Law and Literature to Legality and Affect, Greta Olson makes an important contribution in her reimagination of law and literature as a discipline. What is remarkable is the extent to which Olson's thesis, arguing for broadening the scope and aims of the field, gives effect to Frye's characterization of the field more than half a century before.

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Book Review

*From Law and Literature to Legality and Affect* by Greta Olson

AZKA ANEES

In a speech addressing the Canadian Bar Association in 1970, leading literary critic of the twentieth century Northrop Frye said that “all respect for the law is a product of the social imagination, and the social imagination is what literature directly addresses.” In her book *From Law and Literature to Legality and Affect*, Greta Olson makes an important contribution in her reimagination of law and literature as a discipline. What is remarkable is the extent to which Olson’s thesis, arguing for broadening the scope and aims of the field, gives effect to Frye’s characterization of the field more than half a century before.

The notion that law as a discipline is nothing more than rules and methods for manipulating those rules has long been out of favour in academia. The development of several interdisciplinary fields of “law ands”—law and economics, law and history, law and humanities, law and culture, and so on—has been an effort to understand the law, based on the premise that it is dependent on and interconnected with these disciplines. The problems that occupy legal practitioners and thinkers touch on almost every aspect of the human condition

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and society. Yet, focusing on statutes and judicial opinions alone cannot provide a full picture of the ideological, social, cultural, and moral bases of the law.

Literature seems to offer a remedy, having the ability to convey human experience and feeling as they manifest in everyday life. While the social sciences and philosophy offer further exercises in abstraction, literature provides examples of concrete experiences and particularities of human life. The reader is an active participant in constructing meaning from the narrative and the inner lives of characters within. The hope is that through literature, readers might discover the common humanity beneath a diversity of human experience that is often suppressed by dominant legal culture.

Olson begins her book by situating her argument in contemporary German politics, noting the rise of right-wing terrorist violence in Germany, where she is a professor of English and American Literary and Cultural Studies. However, this resurgence of ethnonationalism, xenophobia, and systemic racism in Germany was also accompanied by pro-immigration sentiments, in the spirit of Angela Merkel’s open border policy during the so-called “refugee crisis” in 2015. Olson draws on two contrasting images that started appearing in public places, online, and at demonstrations, in order to illustrate her central arguments.

**FIGURE 1: PRO-IMMIGRATION SLOGAN**


7. See *e.g.* Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 3rd ed (University of Notre Dame Press, 2007).
8. See Olson, *supra* note 1 at 1.
The first image above shows the pro-immigration slogan “Refugees Welcome,” in keeping with Germany’s generous asylum politics at the time and its Willkommenskultur (“culture of welcome”).\textsuperscript{10} The second image subverts the message in the first. Taken from an old American road sign, it warns against refugees and depicts them as violent, male, sexual predators.\textsuperscript{11} At least one of the men pursuing the fleeing woman is shown wearing a caftan, presumably signifying Muslim and/or Arab origin. From here, Olson sets up her central argument by arguing that the tropes and narratives disseminated through protest logos, for instance, should be understood as responses to law and legal regimes, which constitute what she calls people’s Rechtsgefüle: their impassioned feelings about legality.\textsuperscript{12} Legality is construed broadly, including state-made law, social codes, norms, and mores. Expressions of legality understood in this way can be found in texts, images, sculptures, and fictional representations of law in movies and television.\textsuperscript{13}

Olson draws from the works of European jurists and sociologists of the nineteenth century, as well as contemporary sociologists, to establish the building blocks for her central arguments.\textsuperscript{14} Using the concept of “living law,” understood as people’s consciousness of law and justice independent of state-made law, Olson

\begin{itemize}
  \item \textsuperscript{10} See Ulrike Hamann & Serhat Karakayali, “Practicing Willkommenskultur: Migration and Solidarity in Germany” (2016) 2 Intersections.EEJSP 69, DOI: <https://doi.org/10.17356/ieejsp.v2i4.296>.
  \item \textsuperscript{11} See Olson, \textit{supra} note 1 at 2.
  \item \textsuperscript{12} \textit{Ibid} at 5.
  \item \textsuperscript{13} \textit{Ibid} at 6-7.
  \item \textsuperscript{14} \textit{Ibid} at 19.
\end{itemize}
argues that cultural-legal identities are inextricable from the affect underpinning and reinforcing this broad conception of legality. These theories of law and affect have led to a major shift in how thinkers understand important concepts in law, such as intentionality, responsibility, culpability, and remedy. This turn to affect or emotion in scholarly work inspired Olson to re-envision law and literature as an examination of the relation between legality and affect.

For Olson, the field of law and literature should be reimagined as a method and theory for understanding the relationship between legality and affect. For example, people’s affective reactions to anxieties about ethnonationalism, protectionism, or climate change are understood as passionate responses to perceived changes in their legal environments and, by extension, their legal identities and consciousness. Olson recognizes that these anxieties are localized and historically differentiated; in this example, they are specific to contemporary Western culture. The work of law and literature, therefore, must be alive to the ways in which different sociolegal settings create and reinforce individual and collective senses of legal identity. Olson’s proposed reconfiguration of law and literature as legality and affect explores how identity is constructed by people’s emotional relation to what they believe to be law.

The book consists of five chapters. In the first, Olson proposes a model for understanding how these affectively expressed legal identities are created and how they relate to legality in a specific legal environment. The second describes a model for critically analyzing popular cultural interventions into law, such as courtroom television shows. Next, Olson fleshes out the turn to affect in the law and literature field and distinguishes it from scholarship on law and emotion. The fourth chapter analyzes four case studies from Germany and the United States, demonstrating how aesthetics can be used to interrogate and critique the law.

15. Ibid at 126.
17. Ibid.
18. Ibid at 17.
19. Ibid.
20. Ibid at 25.
21. Ibid at 64.
22. Ibid at 96.
23. Ibid at 125.
Finally, Olson concludes her work by remarking on the continued importance of law and literature in addressing contemporary cultural-legal conflicts.24

Olson emphasizes that law and literature, as a field, must not be solely understood as an American invention. Although not explicitly called “law and literature,” analogous disciplines have appeared in other places and contexts.25 When carrying out inquiries within the field of law and literature, scholars must therefore pay attention to the form and narrative of legal expressions in a way that is sensitive to the cultural settings in which they occur. However, Olson draws heavily from a variety of disciplines in the Western academic tradition to ground her thesis (e.g., narratology, cultural media studies, affect theory). This raises the question of the extent to which her proposed method can be adapted for non-Western cultures and contexts. The chapters that ground her methodological approach are also made less accessible by reliance on highly technical language and jargon, which assumes a level of exposure and familiarity to these disciplines on the part of the reader. Olson's theoretical contributions come alive best in other chapters, where she illustrates how law and affect interact with each other by drawing on narratives, images, and tropes about law that are familiar to laypeople.

In her chapter on popular law, Olson compares the impacts of generically identical fictional television series originating from two different legal environments: the United States and Germany.26 Olson compellingly shows that non-literary media can effectively express anxieties about cultural-legal issues. One of these comparative studies assesses messaging around responsibility, blame, and punishment in the popular courtroom television show, Judge Judy, and its German analogue, Richterin Barbara Salesch. In Judge Judy, the attitude is one of abrasiveness and its attendant punitive ethos towards those who are perceived as moral failures, characteristic of the politico-legal context in the United States.27 On the other hand, the German show reflects the legal values of its localized setting by emphasizing the benefits of social distribution, trust in the legal system, and the need for social cohesion.28 This is, of course, not to say that German shows and their values are normatively superior, but rather that each show reinforces the legal narratives that are familiar to its respective audience.

24. Ibid at 177.
25. Ibid at 12.
26. Ibid at 64.
27. Ibid at 83.
28. Ibid at 88.
As such, law and literature analysis must be conducted with these cultural and medial specificities firmly in mind.

One of the book’s central themes is the political relevance of law and literature. Olson argues that the field is useful both as a way to imagine an alternative legal order and as a tool to critique existing legal conditions. She draws on the two images discussed above in pro- and anti-immigration German art, as well as African American literature and art emerging from the Black Lives Matter movement, to show how highly affective forms of expression can be a form of political resistance when the existing legal order is inequitable and lacking. For Olson, these examples must be of as much interest to law and literature scholars as purely literary forms of expression. The book’s central themes are nicely tied together by the chapters that apply theory. Through her use of case studies, Olson shows that combining narrative and visual analysis with an appreciation for the place of impassioned feeling in such analyses can both preserve space for the narrative study of law and overcome the limitations of focusing exclusively on linguistic forms of expression.

Implicit in the key arguments of Olson’s book is, of course, that law and literature has valuable contributions to make beyond simply mirroring our social, political, and cultural realities. The field is more than just aesthetics in either its idealized or trivialized form. It is an important interdisciplinary exercise that helps us understand the affective politics of the present day and the legal cultures from which they arise.

Examples of expressions of affective politics can be seen closer to home with the convoy protests in Canada that began as a protest against vaccine mandates for crossing the United States border. While these protests started off as anti-COVID-19 mandate demonstrations, protest goals evolved with time, with some protesters expressing the intent to dissolve the federal government and remove Prime Minister Justin Trudeau from office. The models and methods proposed by Olson help us consider what motivated these protests and how

29. Ibid at 177.
30. Ibid at 187.
31. Ibid at 139, 149, 156 and 164.
they developed; broadening our understanding of legality might explain why people are more affectively drawn to its expressions beyond state-made law. The impassioned feelings expressed by protesters demonstrated beliefs that their basic rights were being infringed upon, as well as perceptions that their subjective attitudes constituted stronger authority for the interpretation and content of said rights than those provided by the state.

Olson’s major contribution is a call for greater appreciation of people’s affective relations to legality in the field of law and literature. Law is a culturally and politically mediated process that can be expressed through performance, narrative, images, and affect. But given the highly specialized nature of law as a discipline, most laypeople understand law and legal processes through television, movies, social media exchanges, news reports, and so on. These, in turn, reflect existing expressions of the prevailing norms and narratives in which they operate. By expanding the scope of the field, as Olson suggests in her book, law and literature can make room for affect and imagined law to better inform our understanding of contemporary sociolegal issues.